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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/798,450  | 03/12/2004  | Piotr Nowak          | 46273-127           | 5261             |
| 7590  | 03/18/2008  |                      | EXAMINER            |                  |
| McDermott, Will & Emery<br>600 13th Street, N.W.<br>Washington, DC 20005-3096 |             | STIGELL, THEODORE J  |                     |                  |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             | 3763                 |                     |                  |
|   |             | MAIL DATE            |                     | DELIVERY MODE    |
|   |             | 03/18/2008           |                     | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/798,450             | NOWAK, PIOTR        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | THEODORE J. STIGELL    | 3763                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 December 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Response to Amendment***

### ***Information Disclosure Statement***

All of the references listed in the IDS's submitted on 10/16/2006, 7/11/2005, and 7/26/2004 have been considered.

### ***Claim Rejections - 35 USC § 112***

The 112 rejections have been withdrawn in light of the applicant's arguments filed on 8/30/2007.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20, 24, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Timmermans (4,430,081). Timmermans discloses a subcutaneous port (10) comprising a port corpus (12) comprising an inlet (portion of 12 near 70) defining an opening (70) at one end, and outlet (opposite end of 12) having an outlet opening, and chamber (interior space of 12) therebetween, the inlet comprising a first connecting member (15) and the outlet comprising a second connecting member (16), a septum (20,21,22), a removable septum retainer (17) comprising a third member (threads) removably engaged with the first member so the septum occludes the inlet, and a removable conus (32) extending along the axis, the conus comprising an inlet end (side

of corpus inlet) and an outlet connector (52), and a channel therebetween, the conus inlet comprising an fourth connecting member (threads) being removably engaged with the second connecting member, wherein the port corpus inlet is canted inwardly along the axis of the port corpus (walls 71 of port corpus inlet extend at an angle other than vertical or horizontal), wherein the port corpus and removable conus have the same axis, further comprising a fifth connecting member (55) on the exterior surface of the removable conus and a hollow casing (51) comprising a sixth connecting member (inside surface of 51) engaged with the fifth connecting member, wherein the septum retainer is flanged, wherein the inlet is canted about 45 degrees, and further comprising a catheter (35) attached to the removable conus outlet connector. The examiner maintains that the assembly of the device of Timmermans meets the assembly steps recited by the applicant.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 21-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Timmermans (4,430,081). Timmermans discloses most of the steps recited by the applicant but fails to teach to insert the port into a rodent. However, the applicant not disclosed why the step of inserting the port in a rodent provides an advantage over inserting the port into a human. The examiner maintains that this limitation is a matter of design choice that fails to patentably distinguish over the prior art of Timmermans. It would have been obvious to one of ordinary skill in the art at the time of the invention to insert the port into any animal that the user wanted to treat.

#### ***Response to Arguments***

Applicant's arguments filed 8/30/2007 have been fully considered but they are not persuasive. The examiner has changed the nature of the rejection over Timmermans and therefore the applicant's arguments are moot. The examiner maintains that Timmermans discloses a port corpus inlet that is canted inwardly.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THEODORE J. STIGELL whose telephone number is (571)272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Theodore J Stigell/  
Examiner, Art Unit 3763

/Matthew F DeSanto/  
Primary Examiner, Art Unit 3763